

# **PUBLIC PROCUREMENT MANUAL**

***NO KE KŪ ‘AI ANA. . .  
to purchase***

**State Procurement Office  
June 1998  
Honolulu, Hawaii**

Printed on Recycled Paper

# FOREWORD

*Welcome,*

*The Hawaii Public Procurement Manual, NO KE KŪ ‘AI ANA . . . to purchase, is a tool which all Chief Procurement Officers (CPOs), agency purchasing managers and employees will find useful. It was prepared with the assistance of purchasing professionals in Hawaii and the National Association of State Purchasing Officials. The manual offers guidance for those who are beginning to understand the complexity of buying goods, services or construction. Through a series of tables and check lists, the user should be able to make sound decisions about their authority and responsibility in the procurement process. For the user who is experienced but looking for substantive, technical information, the manual offers a quick cross reference index. The index is focused on key words and their use in the procurement statute, rules or this manual.*

*As the Administrator of the State Procurement Office, my official duties called for the preparation of this manual. My goal was to simplify and clarify the state's procurement system while ensuring fair and open competition with proper documentation of all purchasing actions. This manual provides each of us with a solid point of reference as we exercise our most important task, the expenditure of public money.*

*My office is always open for policy questions. Feel free to call upon me for assistance.*

**Lloyd Unebasami, Administrator  
State Procurement Office  
P.O. Box 119, 1151 Punchbowl Street  
Honolulu, Hawaii 96810  
Phone (808) 587-4700, Facsimile (808) 587-4703**

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## SUMMARY OF SIGNIFICANT CHANGES

With each edition of this manual, this page is offered as a summary of changes made to the prior publication, statutes or rules. Procedures will be reviewed and revised on a continual basis. The revised pages should be inserted and any superseded page(s) should be removed. All revisions will include a date and number. This facilitates keeping the manual current. When a revision is issued, all manual holders should complete the following Manual Revision Index by denoting the date, each revision change number, page(s), and initialing.

### MANUAL REVISION INDEX:

Last Date of Issue	Change Number	Revised Date	Page(s)	Initials
Example:				
6/1/98	1	8/1/98	30-33	initial when pages are changed

# CHIEF PROCUREMENT OFFICER SUPPLEMENTAL INDEX

Chief Procurement Officers may supplement this manual with additional policies and procedures specific to their own jurisdictions. The supplemental pages should be inserted in the manual at the time of distribution. Whenever a revision to a supplemental page is issued, all manual holders should complete the following Chief Procurement Officer Supplemental Index:

## SUPPLEMENTAL POLICIES AND PROCEDURES INDEX OF REVISIONS:

Last Date of Issue	Change Number	Revised Date	Page(s)	Initials
Example:				
6/1/98	1	8/1/98	30-33	initial when pages are changed

# CHAPTER ONE

## GENERAL INTRODUCTION

This manual is a composite of the Hawaii Public Procurement Code, Chapter 103D of the Hawaii Revised Statutes (HRS), Title 3, Subtitle 11, Hawaii Administrative Rules (HAR) on procurement and extracts from other laws which have a direct impact on purchasing personnel. It is provided as a working reference document. Nothing contained in this document should be construed by users to amend, modify, override, or nullify any state statute, county ordinance, rule, policy or procedure of the Procurement Policy Board or the provision of any document used in competitive procurement.

### Purpose of the Manual

Employment in a public purchasing entity is a public trust. Employees involved in purchasing or procurement must conduct themselves in a manner to ensure the integrity of the competitive bid process and to allow all duly qualified bidders access to the purchasing process. It is important for all those involved in the purchasing function to use this manual in conjunction with the statutes and rules. This manual is designed to meet the needs of two kinds of users. The first type of user is the employee who is new to the purchasing process and needs a basic overview of the steps which should be followed. The second type of user is one with extensive purchasing experience. The manual offers a detailed key word index which gives brief explanations of terms and their application by citation in the statute or rule.

### Purchasing Standards of Conduct

*Chapter 84, HRS, Sections 103D-106 and 103D-305, HRS and Sections 3-131-1 to 3-131-6, HAR*

- ◆ No employee shall solicit, accept, or receive directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, or promise, or in any other form if it could be reasonably inferred that the gift is intended to influence the employee in the performance of the employee's official duties. Procurement officers may prepare reports on procurement violations to pin point weaknesses in the system and to find ways to improve procurement.
- ◆ No employee shall disclose information which by law or practice is not available to the public and which the employee acquires in the course of the employee's official duties.
- ◆ No employee shall use or attempt to use the employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others.
- ◆ No employee shall take any official action directly or indirectly affecting personal business or another's personal business.
- ◆ It is unlawful to artificially divide procurements in such a way as to create a purchase that falls into a lower threshold and can thus be obtained through a simpler procurement process.
- ◆ Any person who knowingly and willfully engages in the conduct described above may be subject to civil and/or criminal penalties.



## **Training**

Assistance on the procurement process is available to all purchasing agents. Training will be provided by the State Procurement Office and the Department of Human Resource Development. Using this manual as a guide, users will have an opportunity to review policy and procedure while getting up to date information on statutory or regulatory changes. The head of a purchasing agency is responsible for identifying any procurement violations and ensuring that training is provided to correct the deficiency.

## **The Organization**

### **Chief Procurement Officers**

Public procurement in Hawaii for the most part is decentralized. The procurement function is carried out by 15 different Chief Procurement Officers (CPOs). The CPOs are located throughout the state, serving the three branches of state government, including local county governments, the University of Hawaii, the Department of Education, and the Office of Hawaiian Affairs. Their duties include: 1) procure or supervise the procurement of all good, services and construction; 2) supervise and control all inventories of goods; 3) sell, trade or otherwise dispose of surplus goods; 4) establish programs for the inspection, testing and acceptance of goods, services and construction; and 5) establish operational procedures to assist in the performance of their duties. The CPOs have authority to delegate their purchasing responsibility.

For the purposes of this manual, discussions of authority center around the CPO. The user must be informed about the delegation of authority and responsibilities that delegation encompasses.

### **The Procurement Policy Board**

A seven member autonomous board serves as the rule making body for all procurement law. There is no direct reporting or oversight relationship between the Procurement Policy Board and the Chief Procurement Officers.

### **The State Procurement Office and the Administrator**

The State Procurement Office is administratively attached to the Department of Accounting and General Services. The Administrator is responsible to assist, advise or guide governmental bodies in matters relating to the procurement process. The State Procurement Office and the Administrator provide support to the Board. In addition, the Administrator serves as one of the 15 CPOs with responsibility for all executive branch procurement, except for the University of Hawaii, the Department of Education, and the Office of Hawaiian Affairs.

## **Forms Included**

The forms included with this manual are provided by the State Procurement Office or by Administrative Rule. Except for SPO Form - 7 (Request for Exemption from Chapter 103D, HRS), all other forms are optional for use by the Chief Procurement Officers.

## CHAPTER TWO

### PROCUREMENT OF GOODS, SERVICES AND CONSTRUCTION

#### Identify the Procurement Need

**Step one in the procurement process is identification of the procurement need.**

Each purchaser must determine their specific needs and identify the proper method of procurement. That process should establish the degree of competition, sources, price, and degree of difficulty in administering the contract. Each purchaser should use the formula shown as a guide in carrying out Step one.

Prepare a detailed list and description of the goods, services or construction @ estimated cost + transportation charges + appropriate taxes = total estimated cost.

#### Identify the Method of Procurement

##### Procurement Planning Process Checklist

1. Know if buying goods, services or construction.
2. Know the time required for the procurement
3. Ensure authority, approval, funds for the procurement.
4. Write formal or informal specifications and estimate value.
5. Cost or pricing data required?
6. Decide if site visit, pre bid necessary.
7. Identify Method of Procurement

**Step two in the procurement process is identification of the appropriate method of procurement.**

Purchasers must evaluate four elements to determine the procurement method and should also carefully evaluate each element to ensure that the acquisition of goods, services or construction does not violate nor circumvent state law. The four elements are presented as questions.

The

answers guide the purchaser to the next step. In some cases, the purchaser's agency or county may have lower dollar thresholds. It is important for the user of this manual to know their agency policy.

1. Is the good, service or construction need exempt and therefore not subject to a competitive bidding process? If yes, go to **EXEMPT PURCHASE**.

to

2. Is the good, service or construction listed on a price list available to the agency or county? If yes, go to **PRICE LIST**.

3. Is the good, service or construction need under \$25,000? If yes, go to **SMALL PURCHASE**.

answer

4. Is the good, service or construction \$25,000 or more? If yes,

the following questions and go to **Goods, Services and Construction = \$25,000 or More** and the appropriate subsection.

- a. Is it available from one source only? If yes, go to **SOLE SOURCE PROCUREMENT**.
- b. Is it an emergency purchase as defined in Section 3-122-89, HAR? If yes, go to **EMERGENCY PROCUREMENT**.

- c. Is it a professional service as defined in Section 3-122-62, HAR? If yes, go to **PROFESSIONAL SERVICES**.
- d. If none of the above (a through c), select from the remaining two methods of procurement which are competitive sealed bidding and competitive sealed proposals:
  - 1) Can the good, service or construction be described in a way that bids can be submitted by suppliers and evaluated against the description set forth in the Invitation for Bids (IFB) and award be made to the low bidder? If yes, go to **COMPETITIVE SEALED BIDDING/INVITATION FOR BIDS**.
  - 2) Is it not practicable or not advantageous to use the competitive sealed bidding method of procurement? If yes, go to **COMPETITIVE SEALED PROPOSAL/REQUEST FOR PROPOSAL**.

## Exempt Purchase

### Exempt Purchase Reminder

Agencies or counties generally have specific procedures to follow in the purchase of "exempt" goods, services, or construction. Purchasers should ensure full knowledge of internal procedures before proceeding.

The following procurements are by law, specifically exempt from the requirements of Chapter 103D, HRS.

1. Disbursements of funds, irrespective of their source for grants, subsidies, or purchases of services as defined in Chapters 42F and 103F, HRS.
2. Payments made to or on behalf of public officers and employees for salaries, fringe benefits, reimbursements or professional fees.
3. Obligations the agency is required to pay by law, including fees, permanent settlements, subsidies, claims, refunds, and return of funds held by the state.
4. Disbursement of funds for entitlement programs, including public assistance, unemployment, and workers compensation programs, established by state or federal law.
5. Payment of dues and fees of organizations which the state or its officers and employees are members.
6. Disbursement of funds for deposits, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping.
7. Disbursement of funds to governmental bodies of the state.
8. Disbursement of funds as loans under loan programs administered by a governmental body.
9. Procurement of goods, services or construction from a governmental body other than the University of Hawaii bookstore, from the federal government, or from another state or its political subdivision; provided UH departments and programs, without regard to Chapter 103D, HRS, may procure goods and services from the UH bookstores that are routinely stocked and marketed and not specially ordered.
10. Procurement of goods or services for the office of intercollegiate athletics of the UH at Manoa with moneys from the UH at Manoa intercollegiate athletics revolving fund.
11. Procurements which by state or federal law are expressly exempt from the requirements of Chapter 103D, HRS.

12. Non-construction and non-software development procurements by the comptroller, that are conducted in accordance with trade agreements including the World Trade Organization Government Procurement Agreement.

## Additional Procurement Exemptions

Pursuant to Section 3-120-4, HAR, procurements through administrative rule or as determined by the chief procurement officer, are also exempt from the requirements of Chapter 103D, HRS. While these procurements may be available from multiple sources, procurement by competitive means is either not practicable or not advantageous to the state.

An exhibit entitled, "Procurements Exempt From Chapter 103D, HRS" is located at the end of Chapter 3-120, HAR. This exhibit provides a list of procurements which are exempt by administrative rule. When the head of a purchasing agency determines that a situation exists wherein procurement by competitive means would be either not practicable or not advantageous to the State, the "Request for Exemption From Chapter 103D, HRS" form should be submitted to the chief procurement officer.

By August 15 of each year, each CPO must submit to the Administrator of the State Procurement Office, a record of all exempt purchases \$25,000 or more made during the fiscal year, pursuant to sections 3-120-4 and 3-120-5, HAR.
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### **FORM REFERENCE**

SPO Form 7, Appendix A -Request for Exemption from Chapter 103D, HRS.
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## Price Lists or Price Schedules

Price lists or price schedules, herein after referred to as price lists, are only issued by CPOs and usually commit all agencies under the CPO's jurisdiction and any cooperative agreement with another jurisdiction. It is mandatory that purchasers check the price list that applies to their jurisdiction before proceeding with a procurement. Price lists are established to obtain more favorable prices through volume purchasing and to reduce procurement lead time and administrative effort. Copies of price lists may be viewed on Hawaii FYI and Hawaii's World Wide Web site for downloading and printing at the user's desk. Price lists are issued to notify agencies of the existence of contracts for goods or services available under a price list. Purchasers may issue purchase orders in any amount for goods or services offered on a price list. If a good or service is available on a price list, a purchaser cannot purchase from another source unless a formal written or electronic request, on SPO Form - 5 is made and exemption granted by the CPO. If problems associated with the goods or services on price lists should arise and cannot be resolved between the agency and the price list contractor, agencies should notify their CPO. CPOs are encouraged to form cooperative agreements for price lists. They may contact the State Procurement Office to become a part of a cooperative agreement contract and thus extend price lists to their using agencies.

**FORM REFERENCE**

SPO Form 5, Appendix A -Request for Authorization to Purchase Outside of State Procurement Office Price List. The SPO uses SPO Form-5 to grant exceptions to price lists. Users of this manual should check with their CPO on the process to follow.

## Small Purchase

Hawaii law does not require purchasers to use a competitive bid or conduct a competitive negotiation on purchases which fall within the dollar thresholds of a small purchase. The maximum thresholds are set by statute but individual jurisdictions may have lower thresholds and purchasers must be familiar with their agency's policy.

The procedure for a small purchase is a simple one. Purchasers should make every effort to obtain three quotations (written or verbal) from suppliers for the good, service or construction needed. In addition, the purchaser should attempt to get written confirmation of the quotation from the successful supplier. The award for the good or service must take into consideration price, quality, warranty, and delivery and be made to the most advantageous offer.

Purchasers are required to maintain files of quotations and/or justification explaining insufficient sources, sole source, emergency procurement decisions and reason why an award was made to other than the lowest bid. The award for construction shall be based on the agency's specifications, and shall be made to the lowest offer. In order to obtain consistency in the quotation response, purchasers should ensure that potential suppliers are given identical information. These records must be available for audit and should be kept with your copy of the purchase order.

**FORM REFERENCE**

SPO Form 10, Appendix A-Record of Small Purchase

**FORM REFERENCE**

SPO Form 10A, Appendix A-Small Purchase Quotations

## Goods, Services and Construction = \$25,000 or More

Procurements outside the small purchase threshold require a detailed level of documentation and processing. While all procurements are subject to public scrutiny, purchasers must make every effort to ensure that their integrity and the integrity of the state remain intact to the taxpayers of Hawaii.

This section discusses the procurement methods for goods, services and construction of \$25,000 or more. It also addresses cost and pricing data requirements, preferences, and cooperative purchasing.

## Sole Source Procurement

A sole source procurement is authorized when there is only one source available for the goods, services or construction required. Competition is not available in a sole source situation. A sole source purchase is unlike a restrictive purchase, where the product required is manufactured by only one company, but is available from more than one supplier. Sole source justification based solely on a single vendor's capability to deliver in the least amount of time is not appropriate since delivery time alone is not a valid basis for determining a sole source procurement.

A sole source procurement must be documented by an end user on two forms. The end user must submit a "Request for Sole Source" to the CPO and publicly post for seven days the "Notice of Sole Source." The CPO may approve the request after notice has been given. The following are some basic questions to address before proceeding with a sole source procurement. The answers provide justification for a sole source procurement if it is appropriate.

1. Do other companies make similar commodities that will do the same job or meet the same goals?
2. How is this item unique from all others?
3. Can other items do the same or similar thing?
4. Is there a copyright or patent on the commodity?
5. Is this item available from other distributors?

By August 15 of each year, each CPO must submit to the Administrator of the State Procurement Office, a record of all sole source procurements \$25,000 or more made during the fiscal year.
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<b>FORM REFERENCE</b>
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SPO Form 1, Appendix A - Request for Sole Source
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<b>FORM REFERENCE</b>
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SPO Form 1A, Appendix A - Notice of Sole Source
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<b>FORM REFERENCE</b>
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SPO Form 1B, Appendix A - Notice of Amendment to Sole Source Contract
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## Emergency Procurement

An "emergency condition" means a situation which creates a threat to public health, welfare, or safety that may arise by reason of major natural disaster, epidemic, riot, fire, or other reason as may be proclaimed by the head of a purchasing agency. The emergency condition creates an immediate and serious need for goods, services, or construction that cannot be met through normal procurement methods, the lack of which would seriously threaten the continued function of government, the preservation or protection of property, or the health or safety of any person.

Emergency procedures may be utilized only to purchase that which is necessary to cover the emergency. Subsequent requirements shall be obtained using normal purchasing procedures. Purchasers must document an emergency procurement before it takes place, or as soon after as possible.

The documentation must include information on:

1. The nature of the emergency
2. Listing of the goods, services or construction to be procured
3. The name of the contractor, if known
4. Amount of the expenditure, if known
5. Reason for selection of the contractor. Were quotations solicited?

To further assess justification for an emergency procurement, purchasers should answer the following:

1. What happened to cause the emergency?
2. What would be the negative consequences of following normal purchasing procedures?

By August 15 of each year, each CPO must submit to the Administrator of the State Procurement Office, a record of all emergency procurement \$25,000 or more made during the fiscal year.
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<b>FORM REFERENCE</b>
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SPO Form 2, Appendix A - Request for Emergency Procurement
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## Professional Services

Professional services shall be procured in accordance with Sections 103D-302, 103D-303, 103D-304, 103D-305, 103D-306, or 103D-307, HRS. Professional services are, however, generally procured through the Section 103D-304, HRS, process, which requires the development of a list of individuals who have already been "qualified" to perform a particular service for the state. Pursuant to Section 103D-304, HRS, at least annually, agencies must generate a list of anticipated professional needs and ask for statements of qualifications from potential providers. The statements must include:

1. The name of the firm or person, the business headquarters and location of all offices.
2. The age of the firm and its average number of employees of the past years.
3. The names and phone numbers of up to five clients who could be contacted for reference.
4. The educations, training and qualifications of key members of the firm.
5. Any promotional or descriptive literature about the firm.

Based on the statements, each purchasing agency must establish a review committee consisting of at least three employees to evaluate statements of qualifications for the purpose of compiling a list of qualified professionals. When the purchasing agency identifies a need for the professional services, it shall establish a screening committee of at least three employees of the purchasing agency who shall provide the head of the purchasing agency with the names of a minimum of three persons determined to be the most qualified, together with a summary of their qualifications. If the purchasing agency and user agency are different, there shall be at least one qualified employee from the user agency on the screening committee in addition to the minimum three employees of the purchasing agency. If there are no qualified employees from the purchasing agency, the screening committee may include qualified employees from other governmental bodies. The head of the purchasing agency must rank the selected individuals by order of preference and seek to negotiate satisfactory contractual arrangements with the first person. Failing to do so, the next person must be

approached. If negotiations fail with all individuals, the screening committee will be called upon to select a minimum of three additional "qualified" professionals. If less than three professionals are "qualified" the head of the purchasing agency may proceed with negotiations with fewer "qualified" professionals if prices are fair and reasonable; and other prospective offerors had reasonable opportunity to respond; or there is not adequate time to resolicit additional statements of qualifications. Other methods of procurement may be used, such as direct negotiations, at the discretion and judgement of the head of the purchasing agency, but documentation of the situation (lack of competition, market conditions) must be noted in the procurement file and approval must be given in writing by the CPO.

By August 15 of each year, each CPO must submit to the Administrator of the State Procurement Office, a record of all professional services procurement \$25,000 or more made during the fiscal year.

## Competitive Sealed Bidding/Invitation For Bids

### *Competitive Sealed Bidding Procedures*

1. Determine requirements
2. Do Procurement Planning
3. Prepare the IFB:
  - Statement of Purpose
  - Define the Scope of Work
  - Goods (Furnish or Furnish and install)
  - Detail Service Description
  - Detail Construction Needs
4. Pre bid Conference Schedule
5. Terms and Conditions
6. Special Terms and Conditions
  - Insurance
  - Audit
  - Cancellation Clause
  - Bid Timetable
  - Bid Evaluation and Award Procedure
  - Renewal of Contract
  - Availability of Funds
7. Method of Payment
8. Pricing Schedule
9. Issue/Advertise the IFB
10. Conduct Prebid
  - Conference (if necessary)
11. Issue Amendments (as necessary)

12. Receive Bids
13. Evaluate Bids
14. Award the Contract
15. Administer the Contract



When using a competitive sealed bid process, the goods, services or construction must be described in a way so that bids can be submitted by suppliers and evaluated against the description set forth in the Invitation For Bid (IFB).

Award is made to the lowest responsive and responsible offeror. Competitive sealed bidding includes the issuance of a written IFB containing the specifications or scope of work/purchase description and the contractual terms and conditions applicable to the procurement. The requirements set forth in the IFB may include special qualifications required of potential contractors, life cycle costing, value analysis, and other criteria such as testing, quality, workmanship, delivery and suitability for a particular purpose. The IFB must describe the requirements accurately and completely.

Unnecessarily restrictive specifications or terms and conditions that limit competition are unacceptable. In the competitive bid process, bids must be opened publicly, in the presence of one or more witnesses, at the time, date and place designated in the IFB. The opened bids are available for inspection by the public at the time of opening. Review the Solicitation and Contract Checklist (Appendix) to ensure that all requirements have been met.

## **Multi-step Competitive Sealed Bidding**

When using a multi-step competitive sealed bid process, purchasers should think in terms of two steps. This method is a combination of the competitive sealed proposals process (Step 1) and the competitive sealed bidding process (Step 2) and is desirable to use when it is not practical to initially prepare a definitive purchase description upon which an award would be made based on price.

In Step 1, the purchaser is given the flexibility to do the following prior to soliciting the priced bids in Step 2:

1. Receive technical proposals to be evaluated to determine acceptability;
2. Enter into discussions, if necessary, to clarify the technical proposals received;

3. Request supplemental information; allow changes to the technical offer; and
4. Amend the purchase description.

If the purchaser believes that there are sufficient acceptable technical proposals to assure price competition in Step 2 without technical discussions, Step 2 is initiated wherein the priced bids received with the technical proposals but in separately sealed containers, are opened publicly. If priced bids were not received in Step 1, the purchaser invites bidders submitting acceptable technical proposals to submit a priced bid.

Award: The multi-step award document must combine the specifications of the solicitation with the supplier's technical proposal and the bid price.

## **Competitive Sealed Proposal or Request for Proposal (RFP)**

### **Competitive Proposal Process**

1. A written determination is made by the head of the purchasing agency that competitive sealed proposal method is the more appropriate method of contracting, rather than competitive sealed bidding.
2. An evaluation committee is appointed unless the procurement officer will evaluate the proposals. The evaluation committee, when appointed, is included in the RFP preparation process.
3. Prepare the Request for Proposal (RFP). Determine the evaluation factors and list in the RFP the relative priority of each factor.
4. Advertise the RFP.
5. Open and evaluate proposals. Proposals may be accepted on evaluation without discussions.
6. If discussions are to be conducted, generate a priority list from the acceptable and potentially acceptable offers:
  - a. Conduct discussions with the priority-listed offerors.
  - b. Prepare addenda, if required, and distribute to priority-listed offerors.
  - c. Request best and final offers if required.
  - d. Evaluate best and final offers, if any.
7. Award the contract.

Competitive sealed proposals are used when it is not practicable or not advantageous to use competitive bidding. Competitive proposals provide flexibility in describing what is wanted in general terms and the opportunity through negotiations to change the content of an offer and pricing after opening. The negotiation step allows the purchaser and supplier an opportunity to mediate differences and arrive at an agreement acceptable to both. Competitive proposals require extensive preparation and skill.

The Procurement Policy Board has specified types of goods, services or construction which may be procured by competitive proposal without a determination by the head of the purchasing agency. If items are not listed, written approval must be obtained from the head of the purchasing agency.

Once approvals are obtained, a written Request for Proposal (RFP) is generated and it describes in general terms what is to be procured. It must, contain the specific terms that will be used to evaluate the proposals and should contain other applicable contractual terms and conditions. Review the Solicitation and Contract Check List in Appendix B and the Competitive Sealed Proposal Procedures found in Appendix C.

## Cost or Pricing Data Requirement

If competition is restricted or lacking and/or the prices offered appear high, the purchaser must determine if the prices are fair and reasonable. It is important to know the market and the supplier's situation in regard to the market.

Cost or pricing data is required in support of an offer if any of the following are true statements:

1. The competitive sealed proposal, sole source procurement or the professional service procurement is in excess of \$100,000.
2. An aggregate adjustment (up or down in excess of \$100,000) is made to any contract including those let by competitive sealed bids.
3. It is for an emergency procurement in excess of \$100,000. (Data may be submitted after the award.)
4. The CPO requests such data and has reasonable justification for the need.

Cost or pricing data is not required if the contract price is based on:

1. Multiple offers with "price" as a competing factor.
2. Prices published in a public price list or catalog.
3. Prices substantiated through prices previously paid or by sources independent of the supplier.
4. Prices set by law or regulation.

Only the CPO or the head of a purchasing agency may waive requirements for cost or pricing data. Such a waiver must be documented and kept with the contract file.

### FORM REFERENCE

SPO Form 13, Appendix A - The Certificate of Current Cost or Pricing Data Form

## Preferences

Eight preferences are allowed by statute and rule for offerors of goods, services or construction to a Hawaii government entity. When applicable, these preferences shall apply to solicitations made pursuant to section 103D-302 or 103D-303, HRS, or both. There are a variety of ways in which the preferences can be offered and there are many requirements for certification of the offers made. The most important factor is to ensure that the Special Terms and Conditions state if the preference is offered, and that space is given to bidders to certify that their offer of goods, services or construction meets the preference. These preferences shall not apply whenever the application will disqualify any government agency from receiving federal funds or aid.

### Hawaii Products Preference

This preference shall apply to all bids or proposals whenever a required type of product is available on the Hawaii Products List. Hawaii Products must be qualified as such and registered on the Hawaii Products List. The responsibility for that qualification rests with the person/company seeking the preference. Once qualified, the product is classified as Class I, II, or III. A Class I product is given a 3% preference, Class II is given a 5% preference and Class III is given a 10% preference. If both qualified Hawaii products and non Hawaii products submitted by offerors, then

the offer for the lowest priced Hawaii product, for evaluation purposes, shall be decreased by the 3%, 5% or 10% preference of the product. Preference shall not be considered between Hawaii products. The contract amount of any contract awarded, shall be in the amount of the price offered, exclusive of any preference.

### **Printing, Binding and Stationery Work Preference**

This preference shall apply to all bids or proposals unless it is established that the work cannot be performed within the state. Printing, binding and stationery work also includes preparatory work, presswork, bindery work, and any other production-related work. In calculating the application of the preference for evaluation purposes, the purchaser should only apply the preference if the out-of-state bid is lower than an in-state bid.

When the preference is applied, the amount bid or proposed for work performed out-of-state shall be increased by fifteen per cent. The lowest total offer, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount awarded, however, shall be the amount of the price offered, exclusive of the preference.

### **Reciprocal Preference**

Reciprocal preferences for bids are imposed at the discretion of each CPO. The CPO may apply a preference against a bidder from a state which applies a preference comparable to a Hawaii preference that would be against a Hawaii vendor. If applied, the reciprocal preference shall be equal to the amount the out-of-state preference exceeds the Hawaii preference. The contract amount shall be the amount of the price offered, exclusive of any preference.

### **Recycled Products Preference**

When stated in the solicitation, this preference shall apply to all bids issued by state purchasing agencies. If the solicitation calls for recycled products only or when only recycled products are offered, no preference shall apply. Therefore, the preference is only applied to solicitations which call for virgin or recycled and where recycled is bid. The solicitation shall specify the percentage of the preference and the percentage of the type of recycled material to qualify for the preference. The minimum percentage of preference shall be at least 5%. Additionally, state purchasing agencies shall and county purchasing agencies are urged to purchase only office paper and printed material with recycled content. The contract amount of any contract awarded shall be the original price offered, exclusive of any preference.

Any person desiring a preference shall certify the recycled content of the product when submitting an offer. A Certification of Recycled Content form issued by the administrator shall be included as part of the bid.

### **FORM REFERENCE**

SPO Form 8, Appendix A - Certification of Recycled Content

### **Software Development Business Preference**

This preference shall apply to all solicitations containing bids or proposals from both Hawaii and non-Hawaii software development businesses. Solicitations for software development shall contain a notice stating that a preference will be given to Hawaii software development businesses. A business desiring the preference shall submit a Certificate of Eligibility form with their offer. For evaluation purposes, the offer by a non-Hawaii software development business shall be increased by 10%. The contract amount awarded shall be the original price offered, exclusive of any preference.

#### **FORM REFERENCE**

SPO Form 9, Appendix A - Certificate of Eligibility to Claim Preference as a Hawaii Software Development Business as Defined by Section 103D-1006, HRS.

### **In-State Contractors Preference**

This preference shall apply to all bids for state public works projects. This preference may not be used in combination with any other preference and excludes the counties. In-state contractor preference is available to any public works contractor who has filed all State of Hawaii general excise and income tax returns due to the state and paid all amounts owing on such returns for two successive years for contracts \$5 million or less or four successive years for contracts in excess of \$5 million and been issued a tax clearance certificate. Offerors must provide a copy of their tax clearance certificate. Whenever any offeror selects and qualifies for the in-state contractor preference, the price offered by those not selecting or qualifying for the in-state contractor preference, shall for evaluation purposes, be increased by 7%. The in-state contractor preference may not be used in combination with any other preference otherwise available under state or federal law.

### **Tax Preference**

This preference shall apply to all bids issued by government agencies. The purpose of the tax preference is to ensure fair competition for offerors paying State of Hawaii general excise tax or use taxes or both. To qualify, the offeror must submit to the purchasing agency, tax clearance certificates issued by the state department of taxation and the Internal Revenue Service. For evaluation purposes only, the price submitted by the tax-exempt offeror is increased by the retail rate of general excise tax and use tax or both. The contract amount of any contract awarded shall be the original price offered, exclusive of any preferences used in the evaluation.

### **Qualified Community Rehabilitation Programs**

This preference shall apply to all bids or proposals issued by government agencies. Qualified community rehabilitation programs are nonprofit community rehabilitation programs for persons with disabilities which comply with the United States Department of Labor requirements under Section 14(c), Part 525 Employment of Workers With Disabilities Under Special Certificates, among other qualifications. Goods, services, or construction shall be purchased from qualified community rehabilitation programs if the bid price submitted does not exceed the lowest price by a

non-qualified bidder by more than five percent (5%). The awarded contract amount shall be the amount of the original price offered, exclusive of any preference.

## **Cooperative Purchasing**

Any state or county agency may, upon request, participate in, sponsor, conduct, or administer a cooperative agreement for goods and services with any other state or county agency. The purchases shall be made on the same terms and conditions, and under the same rules and regulations as per the agreement entered into between the participants. Payment for goods or services shall be in accordance to the contract requirements. A public procurement unit may also enter into a cooperative purchasing agreement with nonprofit private health and human services organizations. The nonprofit organization must submit an application and receive approval from the CPO. A nominal fee for participation by a nonprofit organization may be charged. The CPO must approve the cooperative purchasing agreement.

## **CHAPTER THREE**

### **RECEIPT, EVALUATION AND AWARD PROCESS FOR COMPETITIVE SEALED BIDS**

#### **Bid Receipt**

Bids documents, upon arrival at the purchasing agency, must be time stamped but not opened. They must be stored in a secure place by the purchaser until the time and date set for bid opening. Other methods of bid receipt are acceptable only if approved by the CPO. The bid receipt, accuracy of the time and date stamp, security of storage and personnel access to the bid documents are important components in the public perception of the integrity of the purchasing process. Steps should be taken to ensure that this portion of the process is above any scrutiny. Bids or modifications to bid received after the date and time due are considered late. Bids that are late due to the offeror are returned unopened to the offeror. Records of returned bids must be kept in the procurement file.

#### **Bid Opening**

Bid opening should take place in public in the presence of one or more witnesses at the time, date and place specified in the solicitation. Bids should be read aloud and recorded along with the names and addresses of one or more witnesses present at the time of the opening. The purchasers involved in the bid opening must immediately inspect the bid to ensure that it is signed by the vendor, to verify and secure any performance security that is attached and to remove any documents provided by the bidder and marked confidential. Any other material may be made available for public inspection. Unsigned bids with no other evidence of contractual commitment on the part of the offeror must be rejected. Unsigned bids cannot be signed after the bid is opened, even if the vendor is present at the bid opening. A record of the rejection and return must be kept in the procurement file. Each procurement file is a public record and upon award, is available for review by auditors, reporters and the general public upon request and only during normal business hours.

#### **Mistakes in Bids**

A bidder may correct a mistake in a bid prior to the time of opening by giving written notice to the purchasing agency of intent to withdraw the bid for modification or to withdraw completely.

Changes in a bid after opening are acceptable if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. Corrections to the bid that may be necessary due to a mathematical mistake are also acceptable. In case of error in extension of price, unit price shall govern.

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## **Bid Evaluation and Award**

The award is made to the lowest responsible and responsive bidder and is based on criteria established in the solicitation. Award notification must be made promptly. Only objective measurements may be used in determining the lowest bidder.

Examples of objective evaluation measures include:

1. Transportation costs
2. Life cycle costs

In the event that all bids exceed the funds available, the purchaser is authorized to conduct negotiations with the low bidder in order to reach an acceptable price.

## **Low Tie Bids**

It is possible to receive bids which are identical in price and meet all of the requirements established in the solicitation. At the discretion of the purchaser, award may be made in any permissible manner including:

1. Award to a Hawaii based business
2. Award to the bidder who received the previous award
3. Drawing lots

A record of a low tie bid must be maintained with the procurement file

## **Waiver to a Competitive Sealed Bid**

If only one responsive bid is received, the purchaser has authority to:

1. Award the bid
2. Reject the bid
3. Cancel the procurement
4. Select an alternative procurement method

If no bids are received or there are no responsive bids, the purchaser may:

1. Determine it is neither practicable nor advantageous to the state to issue a new solicitation
2. Select an alternative procurement method and obtain CPO approval
3. Document the procurement method selected

## **Vendor Protest**

It is the state's policy to try to resolve all procurement disagreements without litigation. Any bidder, contractor, or offeror may protest to the CPO or head of the purchasing agency within five working days of the action which gives rise to the protest. The protest may occur at any point during the solicitation. Two written copies of the protest must be submitted in an envelope marked "Protest." In addition, the protest should be served personally or sent via certified mail, contain the name and address of the protestor, appropriate identification of the solicitation, a statement of reasons for the protest, and evidence regarding the protest. The protest is officially received within 48 hours of the time of mailing if delivered as stated above.



The CPO or head of the purchasing agency must submit a copy of the protest to the Attorney General or to the Corporation Counsel within three working days of the receipt. A stay of procurement is in effect on all protests if they are filed appropriately, no award had been made, and the delay in the procurement does not propose a threat to the state or agency. At that point, the CPO or head of the purchasing agency is to be given a written determination on the protest as soon as possible.

If the bidder, offeror, contractor is still not satisfied with the decision, a request for reconsideration may be filed within ten working days. The CPO or head of the purchasing agency may uphold the previous decision or reopen the case. In any event, the decision made in the "request to reconsider" is final. The protestor's only recourse is to pursue an administrative hearing. The protestor shall notify the CPO or head of the purchasing agency of intentions to file an appeal within five working days. The actual appeal must be filed within seven calendar days.

#### Protest Time Frame

- ◆ 5 working days of grievance arising - protest must be filed
- ◆ 48 hours - time for protest to be received, if delivered correctly
- ◆ 3 working days - time to submit copy of the protest to the attorney general
- ◆ ASAP - the CPO makes a decision on the protest
- ◆ 10 working days - time limit on request for reconsideration of the CPO decision.
- ◆ ASAP - CPO decision on request for reconsideration
- ◆ 5 working days - time allowed for protestor to notify of plans to file an administrative appeal.
- ◆ 7 calendar days - time allowed to actually file an appeal.

## CHAPTER FOUR

### RECEIPT, EVALUATION AND AWARD PROCESS FOR COMPETITIVE SEALED PROPOSALS

#### Approvals

Review Sections 3-122-41 to 3-122-59, HAR and verify that the intended procurement meets the criteria for competitive sealed proposal rather than competitive sealed bidding. If the intended procurement of goods, services or construction is not preapproved by the Procurement Policy Board and listed at the end of subchapter 6, Chapter 3-122, HAR, a written determination must be prepared by the head of the purchasing agency.

#### Prepare the Request for Proposals

##### Scope of Work or Statement of Needs

Purpose: A brief statement about the intended procurement.

*The purpose of this Request for Proposal is to solicit sealed proposals to establish a contract through competitive negotiations for (insert description of good, service or construction) by (insert agency/city/county name).*

Background: If used, this section should briefly state important historical facts about the present procurement need.

Scope of Work: Should describe in general terms the good, service or construction to be purchased. Specifications may be referenced by attachment.

The Scope of Work should address:

1. Specific tasks, sub tasks, parameters and limitations restricting such task or sub tasks which must be accomplished and/or considered by the contractor or included in the final product. Consequently, each task should be numbered and organized in such a manner as to identify it as an individual task among many. This is one of the most important sections of the RFP, because it is the section upon which the Offerors will base their proposed prices.
2. Descriptive factors that may affect the procurement such as plans, statistical reports, office space, personnel, response times, workmanship, working hours, overtime, access to work site etc.
3. Consistent terminology describing the roles of those involved in the procurement. Examples include: using contractor (not offeror, consultant and then vendor). At the same time, refer to the administrator of the contract as the project manager (not project leader, purchasing manager, etc.). Any term is acceptable, but should be used consistently to avoid any assumption that more

than one contractual position may exist.

4. Mandatory verses optional requirements should be addressed with shall and must verses should and may.

## **Proposal Preparation and Submission**

This section should inform the offerors of how the proposal should be submitted in terms of both presentation and legal requirements.

1. Number of copies of the proposal, how the proposal is to be prepared, the possibility of oral presentations by the offerors, deadline for response.
2. Mandatory requirements such as signature of an authorized representative of the offeror, and/or other statements required in solicitations. (Refer to Appendix B Checklist).
3. Other specific organizational standards which the head of the purchasing agency may want to request from the offeror. Examples include requirements for binding, page numbering, table of contents, ordering within the proposal itself (should it match the order of the RFP). If other standards are set, a sentence should be included which states that proposals that fail to meet those standards will be automatically rejected.
4. Include notice that all materials submitted with the proposal become the property of the agency/county.
5. Other requirements to consider:
  - a. RFP cover sheet and all amendments with signatures or initials of the offeror to ensure knowledge.
  - b. Offeror data sheet indicating specifics about company, headquarters, fiscal responsibility etc.
  - c. Experience statement regarding the specific solicitation.
  - d. Names and qualifications of all personnel to be assigned to the project.
  - e. Resumes of all personnel to be assigned to the project.
  - f. List of proposed equipment/goods etc. including operating parameters, illustrations etc.
  - g. What, when and how the service will be performed.
  - h. Time frame for completion of the project. Major deliverable points.
  - i. Proposed price

## **Evaluation and Award Criteria**

Evaluation factors which are not specified in the RFP may not be considered. The RFP cannot contain language that says the evaluation is based on "and any other criteria the agency may decide to use." Evaluations may be done with a numerical rating system or by an individually designed rating system. If the evaluators set their own criteria, it must be in writing and included in the RFP. Evaluations must consider applicability of any preference offered in Chapter 3-124, HAR, Preferences. If a numeric system is used, the following are examples of weighting systems and are for reference only.

<b>For Services or Construction</b>	
1. Qualifications and experience of Offerors in providing the service.	30 points

2. Specific plans or methodology to be used to perform the services.	30 points
3. Price.	25 points
4. References from other clients.	15 points
5. Total	100 points

<b>For Goods</b>	
1. Quality of equipment offered and their suitability for the intended purpose.	30 points
2. Experience in providing the goods.	25 points
3. Price.	20 points
4. Maintenance support.	15 points
5. Scope and suitability of training offered to personnel.	10 points
6. Total	100 points

### **Pre-Proposal Conference**

If a pre proposal conference is desired, indicate the date, time, place and whether attendance is mandatory or optional.

### **General Terms and Conditions**

Include the general terms and conditions for goods, services and construction as prepared by the purchaser's jurisdiction.

### **Special Terms and Conditions**

Special terms and conditions should be developed and included, prior approval may be required from the purchaser's legal adviser or the CPO. Although there are many items which might be included in special terms and conditions, you may want to check the need for statements related to insurance, audit of the plant or inspection of records, cancellation of the contract, renewal of the contract, availability of funds.

### **Method of Payment**

Specify when payment will be made (monthly, quarterly, upon completion and specify when invoices are to be submitted (upon shipment, upon completion, on the 10th of each month etc.).

### **Pricing Schedule**

Give specific information on how the price is to be submitted and the breakdown of costs. Indicate if lump sum is acceptable.

### **Attachments**

List any attachments and a description of their purpose.

## **Issue the RFP**

Issue the RFP with a cover sheet, advertise in the appropriate newspaper, identify potential offerors and mail to them directly if permitted, and have a copy of the solicitation available for public inspection at the office issuing the solicitation.

## **Select an Evaluation Panel**

The panel can be as small as one (if that person is the procurement officer) and should not exceed five persons. Include people who are knowledgeable of the Hawaii Procurement Code and Rules as well as those with technical expertise in the procurement. Members of the evaluation panel should also be the same persons that were responsible for the development of the RFP and award criteria.

## **Additional Conferences**

Conduct pre-proposal conference and/or site visit if required in the RFP. If a conference or site visit is held, have attendees sign a roster indicating their participation.

## **Addendum**

If necessary, issue addendum to correct errors or make any other changes which resulted from the pre-proposal conference or site visit.

## **Receive Proposals**

Time stamp proposals upon receipt and store in a secure location until the due date. Open the proposals in the presence of two or more procurement officials. Prepare a register of proposals received and indicate the name of each offeror, the number of modifications received, if any, a description of the good, service or construction item offered. Proposals are open for public inspection only after the contract is signed by all parties.

## **Evaluate Proposals**

Evaluate proposals and generate Priority Listed Offerors. The evaluation committee or procurement officer should evaluate proposals and classify them as acceptable, potentially acceptable or unacceptable. Only those proposals which are classified as potentially acceptable or acceptable may be placed on the "priority list." The proposals which make the priority list are those considered as responsive and responsible. Proposals from debarred or suspended offerors are rejected automatically. Only priority listed proposals are permitted to continue with the RFP process for the intended procurement.

## **Communication**

Communicate with the Priority Listed Offerors formally and keep records of discussions and information exchanged. Any substantial oral clarification must be done in writing and shared with all on the priority list. Priority Listed Offerors must submit a best and final offer or their most recent proposal will be regarded as the best and final offer. Cost and pricing data on procurements in excess of \$100,000 are generally required

## **Best and Final Offers**

Best and Final Offers are accepted at a date and time set by the procurement officer. The best and final offers are submitted only once unless there is written documentation of a need for additional discussions.

## **Award**

Award the contract to one of the Priority Listed Offerors in writing and document that the proposal is responsive, responsible and advantageous to the procuring entity based on the factors set out in the Request for Proposal.

## **Waiver to Competitive Sealed Proposal**

If only one responsive proposal is received, the purchaser may:

1. Award the proposal
2. Reject the offer
3. Cancel the procurement
4. Select an alternative procurement method

If no proposals are received, the purchaser may:

1. Determine it is neither practicable nor advantageous to the state to issue a new solicitation
2. Select an alternative procurement method and obtain CPO approval
3. Document the procurement method selected

## **CHAPTER FIVE**

### **CONTRACT ADMINISTRATION AND LEGAL AND CONTRACTUAL REMEDIES**

#### **Contract Administration**

This process begins with the signing or execution of a contract or purchase order. Its purpose is to assure that the contractor's total performance is in accordance with the terms and conditions of the contractual agreement. The integrity of the public purchasing system demands that goods, services or construction be furnished as specified in the contract. Contract administration includes all actions taken by the purchasing agency, relative to a specific contract after the award is made. The contract administration responsibility should be assigned in writing to specific individuals or positions.

Procurement records: The purchaser awarding a contract must establish a file for the procurement transaction at the solicitation stage. It should contain:

1. A description of the requirements/requisition
2. Copies of the solicitation and all forms prepared in conjunction with the solicitation
3. Sources solicited and responses received (bids)
4. The method of evaluation and award.
5. A signed copy of the contract or purchase order
6. Copies of all bid securities

#### **Receipt, Storage and Inspection**

When supplies, materials and equipment are received, the receiving agent must assure that the supplies, materials or equipment received were equal in quality and quantity to those identified in the award. At the time of delivery, the receiving person must determine that the purchase order matches the carriers freight record in terms of the number of cartons, crates, boxes etc.

In addition, the receiving person must examine the containers for signs of damage or pilferage and either refuse to accept delivery or note damage or pilferage on the freight record. A copy of the freight bill should be kept for agency records and indicate that further inspection of the goods may be necessary. It is up to the end user or purchaser to conduct a detailed inspection of all deliveries and to verify that the material received matches the order.

#### **Complaint to Vendor**

There are a number of factors that can contribute to less than satisfactory performance on the part of the contractor. Verbal communication with the contractor is usually the quickest manner to resolve a problem. However, once a procurement officer determines that the problem is not being corrected satisfactorily, then SPO Form 12, Complaint to Vendor, should be initiated. SPO Form 12 will



serve as written notice and record of the contractor's failure to perform should further action be required.

#### **FORM REFERENCE**

SPO Form-12, Appendix A - Complaint to Vendor

### **Extension of Time on Contracts**

If a contract has exhausted its provision for extension(s), or if the contract does not include a provision for extension(s), the contract may be extended upon approval of the chief procurement officer.

#### **FORM REFERENCE**

SPO Form 3, Appendix A - Request for Extension of Time on Contracts

### **Suspension or Debarment of Bidders from a Bidding Process**

#### **Vendor Non Performance:**

##### **Items to Look For**

- ▶ Over or under shipments
- ▶ Late shipments
- ▶ Failure to ship
- ▶ Damaged or defective products
- ▶ Unauthorized substitutions
- ▶ Billing errors
- ▶ Service deficiencies
- ▶ Failure to respond to complaints
- ▶ Unethical practices
- ▶ Misrepresentation of merchandise
- ▶ Conviction or plea of guilty to crimes involving fraud or restraint of trade

Suspension and debarment actions against bidders, offerors, contractors are provided authority in both statute and rule. Suspension is for the period of time it takes to complete an investigation into possible debarment including any appeals of a debarment decision for a period not to exceed ninety (90) days. A detailed description of the process and treatment of the bidder is contained in Sections 3-126-11 to 3-126-18, HAR. Goods, services or construction with unacceptable differences between the contract and deliverable should be refused and reported with a full explanation of the reason for the refusal. The CPO may schedule a meeting

with the vendor and the purchasing agency to try and resolve the complaint. Failure to resolve the complaint may result in suspension or debarment.

### **Breach of Contract**

While breach of contract is the legal term assigned by statute and rule, Hawaii law specifically allows for the remedy in a breach of contract dispute to be applied to any "controversy" that may arise between buyer and seller. Authority to settle a controversy is placed with the "procurement officer." That person has the same authority as the CPO or the head of the purchasing agency for all controversies valued at \$50,000 or less. Controversies valued above \$50,000 require the prior written approval of the CPO or head of the purchasing agency. The procurement officer has ninety

days to issue a written decision for controversies \$50,000 or under. Additional time is acceptable for controversies in excess of \$50,000 but the contractor must be notified in writing of the time it will take to receive a decision.

The amount determined to be payable, less any amounts already paid, is payable upon the decision (without regard to a contractor appeal). Interest is payable at the rate set by statute.

## **Solicitation in Violation of the Law**

A solicitation or award may be in violation of the law. A finding of such a violation must be made by the Attorney General, or Corporation Counsel, and in consultation with the State Ethics Commission. If a finding is made prior to award, the solicitation must be canceled or revised to comply with the law. If a finding of violation of the law is made after award, remedies outlined in Sections 3-126-35 to 3-126-38, HAR, must be followed.

## **Administrative Proceeding for Review**

Parties to a protest, debarment or suspension, pursuant to sections 103D-701 or 103D-702, HRS, may request a hearing with a CPO. Within three (3) business days, the CPO must submit the request to the Office of Administrative Hearing, Department of Commerce and Consumer Affairs which shall commence the hearing twenty-one (21) calendar days after receipt of the request.

## **Judicial Review or Action**

A judicial review of contested cases is provided if the parties are aggrieved after an administrative proceeding under section 103D-709, HRS. The proceedings for review shall be filed in the Hawaii Supreme Court within ten (10) days after the issuance of a decision in an administrative proceeding.

A person aggrieved by a decision issued pursuant to section 103D-703, HRS, may initiate judicial action, under, or by virtue of, the contract in controversy in the district or circuit court.

# CHAPTER SIX

## PROPERTY MANAGEMENT

### Accountability

The CPO is responsible for the accountability of all state property within their jurisdiction. The CPO may assign responsibility for property management to a designated property custodian.

The CPO for the state's executive departments designates the department administrator as the property custodian for their jurisdiction. Due to the huge organizational structure of some departments, the administrator may assign the responsibility for accountability to dedicated inventory personnel.

### Internal Control Procedures

The designated property custodian or inventory personnel are required to establish, maintain and enforce written internal control procedures to ensure accountability for all state property. Refer to Section 3-130-4 HAR, for guidelines on required internal control procedures.

### Physical Inventory

Physical inventory is required annually to verify the physical count of the state's property. If the person charged with responsibility as the property custodian changes, an inventory must be taken at that time. Similarly, completion or termination of any agency account also requires a physical inventory.

### Annual Inventory Reporting of State Property

Annual inventory reporting of state property is required before September 16 of each year and must contain information as required in Section 103D-1206 and 103D-1207, HRS. Forms for inventory reporting are available from the Inventory Management Office of the State Procurement Office.

The inventory reporting of all state property is required to be submitted to the Administrator of the State Procurement Office by CPO's, administrative heads of the executive departments, county mayors, and all other persons, offices and boards of a public character.

### County Officers

County officers are required to submit an annual inventory report of all county properties to their council within forty-five (45) days of the close of their respective year. Refer to section 103D-1208, HRS, for reporting requirements.

## **Penalties for Non-Compliance**

Penalties for non-compliance with inventory reporting include withholding of salary or fines.

## **Theft of State Property**

The theft of state property shall be immediately reported to the appropriate law enforcement agency and to the state government unit within ten days of discovery. The property custodian must conduct an investigation, submit a disposal application and remove the item from inventory.

## **Excess State Property**

Excess state property must be made available to other state agencies and other agencies are encouraged to meet their needs with the use of the excess state property rather than the procurement of new items. Proper controls and documentation of the transfer of excess state property must be in place. Property may be listed on the State Procurement Office Excess State Property List; for information contact the Inventory Management Office at 831-6756.

## **Disposal of Surplus State Property**

Disposal of surplus state property shall follow the requirements of Section 3-130-10, HAR.

# **CHAPTER SEVEN**

## **SURPLUS PROPERTY**

### **Personal Property**

The Surplus Property Office handles the surplus personal property for both the state and federal governments. Organizations that qualify for surplus property would be state agencies, city and county offices, non profit educational and public health organizations, nonprofit homeless providers of elderly care, and drug rehabilitation providers. The conditions of the properties vary, some are unused, others are slightly used, and the last group would be scrap.

### **Definition of Items**

Items consist of vehicles, furniture, small equipment, large equipment, clothing, kitchenware, metals, bedding, office supplies, medical supplies, heavy equipment, ships and aircraft.

### **Charges**

Transfer charges are applied to property received at the state agency's warehouse and passed on as a service and handling charge to the customer. In general, the charges are assessed for the care and handling of surplus property and are limited to the actual amounts necessary to sustain operations.

### **Property Availability**

Property is normally available on a first come first serve basis, but we do keep customer requests on file. The warehouse facility is located at 729 Kakoi Street in Honolulu and is open from 8:00 a.m. until 4:00 p.m. Monday through Friday. The telephone number is 831-6757.

# CHAPTER EIGHT

## ASSISTANCE TO SMALL BUSINESS

### Small business

CPOs are encouraged to work with the Department of Business, Economic Development and Tourism in providing small business assistance. The CPO may provide training to small businesses to help them better understand how to provide goods, services, or construction to the state, city or county governments.

To achieve that goal, CPOs are encouraged to:

1. Give special publicity to procurement procedures and issue special publications that will assist small businesses.
2. Compile, maintain and make source lists of small businesses available to purchasers.
3. Include small businesses on solicitation mailing lists.
4. Develop and conduct training to assist small businesses.
5. Reduce the level or change the types of bonding normally required.
6. Make special provisions for progress payments.
7. Establish the goal that 20% of Hawaii's public purchasing expenditure be awarded to small business.

## APPENDIX A

### FORMS

1. SPO FORM-1      REQUEST FOR SOLE SOURCE (Rev. 6/98)
2. SPO FORM-1A    NOTICE OF SOLE SOURCE (Rev. 6/98)
3. SPO FORM-1B    NOTICE OF AMENDMENT TO SOLE SOURCE CONTRACT  
(Rev. 6/98)
4. SPO FORM-2      REQUEST FOR EMERGENCY PROCUREMENT (Rev. 6/98)
5. SPO FORM-3      REQUEST FOR EXTENSION OF TIME ON CONTRACTS  
(Rev. 6/98)
6. SPO FORM-5      REQUEST FOR AUTHORIZATION TO PURCHASE OUTSIDE OF  
STATE PROCUREMENT OFFICE PRICE LIST (Rev. 6/98)
7. SPO FORM-7      REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS  
(Rev.6/98)
8. SPO FORM-8      CERTIFICATION OF RECYCLED CONTENT(Rev. 6/98)
9. SPO FORM-9      CERTIFICATE OF ELIGIBILITY TO CLAIM PREFERENCE AS A  
HAWAII SOFTWARE DEVELOPMENT BUSINESS AS DEFINED  
BY SECTION 103D-1006, HRS (Rev. 6/98)
10. SPO FORM-10    RECORD OF SMALL PURCHASES (Rev. 11/97)
11. SPO FORM-10A   SMALL PURCHASE QUOTATIONS (11/97)
12. SPO FORM-12    COMPLAINT TO VENDOR (6/98)
13. SPO FORM-13    CERTIFICATE OF CURRENT COST OR PRICING DATA  
(Rev. 6/98)

Use of the above-listed forms should be used by all executive branch agencies (except DOE, OHA, and UH) and optional for use by the Chief Procurement Officers of other jurisdictions, with the exception of SPO Form-7, which is mandatory to all jurisdictions pursuant to section 3-120-5, HAR.

## APPENDIX B

### SOLICITATION AND CONTRACT CHECKLIST

1. **Approval:** If an approval is required, it should be obtained prior to preparing the solicitation and filed with the solicitation.
2. **Availability of Funds:** Funds to support a procurement must be available and have appropriate approvals from the Chief Financial Officer to ensure binding contract.
3. **Best and Final Offer:** The procurement officer may issue to all offerors who are still within a competitive range, a request for best and final offers. Best and final offers are submitted to the procuring entity in a competitive negotiated procurement after written or oral discussions are conducted. There are two commonly used types of Best and Final Offers. One is a letter request from the purchasing officer stating that companies should submit their best and final offer. The second is the release of a contract with the request for a best and final offer in the completion of the actual contract document. The offeror must then fill in the contract with their best and final offer and the procuring entity makes a decision and signs the contract of the winner.
4. **Bid Opening:** The date, time and place for bid opening must be stated.
5. **Cancellation:** The law allows for cancellation of any solicitation for convenience. The solicitation should include a statement allowing such cancellation.
6. **Change Order or Contract Modification:** If changes such as quantity, scheduling or scope of work take place during the contract period, the solicitation should contain clauses developed for goods, service or construction contracts as established in Sections 3-125-2 to 3-125-4.
7. **Contract Period:** If a contract is for a period of time such as 120 days, the beginning and ending date must be stated. If extensions periods of time are an option, the option must be stated in the solicitation.
8. **Delivery:** Delivery requirements must be stated in the solicitation. (Location, inside/outside, etc.)
9. **Determination:** If competitive sealed proposals are solicited, rather than competitive sealed bids, there must be a written determination made by the CPO and placed in the solicitation file unless the solicitation is one of the specified goods, services, or construction approved by the Procurement Policy Board.
10. **Differing Site Conditions:** If the purchaser wants to accept or assign responsibility for site conditions, the contract must contain language as found in Section 3-125-11, HAR.
11. **Dispute:** Language regarding dispute settlement, found in Section 3-126-31, HAR, must be included in all solicitations.
12. **Dollar Limitation:** For other than fixed price contracts, the solicitation should provide for a dollar limit that cannot be exceeded by the contractor.
13. **Drawings:** If drawings are required, specify the type, date due and delivery point for the drawings.



14. **Evaluation Criteria:** State the specific criteria on which the bid will be evaluated and awarded. For a RFP, the evaluation criteria must establish a standard indicating the desired performance for each criteria. In addition, the step by step evaluation and scoring procedures which are to be followed to assure objectivity and thoroughness in comparative analysis of the proposals should also be described.
15. **Facility Needs:** The solicitation should state if the contractor should provide own facilities (portable toilets, storage etc.) or if the agency/city/county will provide.
16. **General Terms and Conditions:** Also referred to as boiler plate, should be included in every solicitation. The Terms and Conditions vary by jurisdiction but all should include reference to preferences offered to Hawaii products and printing, binding and stationery work performed within the state.
17. **Hours of Work:** The solicitation should ensure clear guidelines on hours of access to facilities and appropriate hours of work for the contractor.
18. **Insurance:** The solicitation must include a statement requiring liability insurance if the contractor will be working on government property.
19. **Intent to Bid:** Public advertisements and posting of bids must call for bidders to submit a "Notice of Intent to Bid" for the construction of any public building or public work in excess of \$25,000.
20. **Licensing:** Verify any licensing requirements and state the requirements in the solicitation.
21. **Liquidated Damages:** If time and quality of performance or delivery are critical, it may be necessary to include a provision for liquidated damages. Ensure that a statement is included and calculations are valid and reasonable. Suggested language is found in Sections 3-125-19 and 3-125-20, HAR.
22. **Material Supplies:** If there is a government furnished material to be supplied to the contractor, the solicitation must provide for its control and return. If the contractor is to provide materials, the quantity, quality and availability must be specified.
23. **Method of Award:** The method of award must be stated in the solicitation.
24. **Method of Payment:** If any payment is made prior to contract completion, the terms and schedule of payment should be included in the contract.
25. **Negotiation:** Any contract awarded without the use of sealed bidding procedures is a negotiated contract. Negotiated contracts require a combination of competition and discussion. It is a flexible process that includes the receipt of proposals from offerors, permits written and oral discussion and gives offerors an opportunity to revise their offers before award of a contract. If negotiation is used, the solicitation must clearly state the intent and give dates and times for "negotiation." Following negotiation, the procuring entity issues a Best and Final Offer.
26. **Novation or Change of Name:** Each contract must contain language providing for actions related to the contractor name as found in Section 3-125-14, HAR.
27. **Ownership of Documents:** If any plans, camera ready copy or other documents are produced as a result of the contract, the solicitation should state ownership by the agency/city/county upon completion of the contract.

28. **Pre bid, Pre proposal Conferences, Site Visits:** The solicitation must state the date, time and place for any pre bid, or pre proposal conference or if a site visit is required. It should also state if attendance is optional or mandatory to provide clarification and promote competition.
29. **Preferences:** There are six preferences established in Sections 103D-1001 thru 103D-1006, and 103-45.5, HRS. Special terms and conditions contained in the solicitation must state if a preference is offered and space should be provided to bidders to certify that their offer of goods, services, or construction meets the preference.
30. **Price Adjustments:** Each goods, service or construction contract must contain language providing for price adjustments as found in Sections 3-125-12 and 3-125-13, HAR.
31. **Procurement Officer Directives:** Each goods, service or construction contract must contain language providing for claims based on a procurement officers actions or omissions as provided for in Sections 3-125-15 and 3-125-16, HAR.
32. **Prompt Payment:** Each contract must contain language providing for prompt payment as found in Section 3-125-23, HAR.
33. **Public Notice:** 10 days prior to the scheduled date for receipt of bids, a one time legal advertisement must be published either in a newspaper of general circulation within the state or in a newspaper of local circulation in the county. The public notice does not preclude direct mailing of the solicitation or posting in a public or private telecommunications network. The suggested guide for legal advertisements is: "The (name of the entity) will accept sealed bids or requests for proposal until (time of bid opening), (day of the week), (month), (year) for the purpose of purchasing the following: (name of good/service/construction). Detailed specifications may be obtained by contacting (name of contact person) at (telephone number) or at (physical mailing address)."
34. **References:** If references are required, the number and type should be stated in the solicitation.
35. **Remedies:** Each contract must contain language providing for remedies as found in Section 3-125-24, HAR.
36. **Requirement:** The solicitation should clearly state what is wanted, where and when to be shipped and how many or how much is required.
37. **Response Time/Service Calls:** Standards for response time to service calls must be stated in the solicitation.
38. **Samples:** If samples are required, the solicitation must state the type, quantity, size and the place and time for submission. If samples are not required, the solicitation should state that samples or descriptive literature are not required and are submitted at the offeror's risk and will not be deemed to vary any of the provisions of the solicitation.
39. **Security, Contract Performance and Payment Bonds:** Bid security is required on construction contracts when the price exceeds \$25,000. Other contracts for goods or services should be reviewed to see if security is required to protect the state's interest.

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40. **Source Selection:** The following are typical examples of source selection phrases used in RFP's. 1) The RFP states that contract award will be made to the offeror who "provides the greatest value, price and other factors considered to the procuring entity." 2) The RFP stated that contract award will be made to the "offeror whose proposal was most advantageous to the procuring entity and that price and other factors (listed) were considered." 3) The RFP stated that award will be made to "the offeror whose proposal is evaluated as offering the optimum approach for attainment of program objectives and considered not only cost, but other program objectives." 4) The RFP stated that "award will be made to the offeror whose proposal is acceptable, whose technical/cost proposal relationship is most advantageous, and who is considered to be a responsible bidder."
41. **Special Terms and Conditions:** Each solicitation must be reviewed to ensure that special terms and conditions are included. They should be essential to the requirement, protect the interests of the purchasing jurisdiction, and assist the supplier in understanding the intent of the bid.
42. **Specifications/Scope of Work:** The specifications are a detailed description of what is to be procured, and is a part of every solicitation. The specifications should establish the quality level that is used to determine the acceptability of the goods or services delivered. Specifications should be open and competitive.
43. **Stopped Work Order:** Each solicitation must contain language allowing for stop work orders for goods and service contracts as found in Section 3-125-6, HAR.
44. **Subcontractor Identification:** The solicitation must include a statement requiring the name(s) and nature and scope of work, and value of the work to be performed by each subcontractor, partner or other associate involved in the final contract.
45. **Suspension of Work:** Each solicitation must contain language allowing for suspension of work as found in Section 3-125-7, HAR.
46. **Technical Data:** If technical data will be required for evaluation purposes, the solicitation should specify when and where the data should be submitted.
47. **Termination:** Each contract must contain language allowing for termination for default in goods, services or construction as provided for in Sections 3-125-17, 3-125-18, 3-125-21, 3-125-22, HAR.
48. **Variation in Quantity:** Each definite quantity goods or service contract must contain language allowing for variations in quantities as found in Section 3-125-8, HAR.
49. **Variations in Estimated Quantities for Construction Contracts:** Each construction contract must contain language allowing for variations in estimated quantities as found in Section 3-125-10, HAR.
50. **Warranty:** If a warranty is required, specify the type and minimum period of time in the solicitation.

## APPENDIX C

### DEFINITIONS

**Administrative proceeding / judicial review-** Sections 103D-709, 103D-710, HRS and Section 3-126-42 to 3-126-78, HAR

**Advertising** a form of public notice of an intended procurement, also referred to as legal notice

**All-or-none bid** a bid submitted for a number of different items, services, etc., in which the bidder states it will not accept a partial award, but will accept only an award for all the items, services, etc., included in the Invitation to Bid. Such bids are acceptable only if provided for in the invitation or if the bidder quoted an individual price for each of the items, services, etc., as listed and is the low bidder on each item.

**Breach of contract** a failure without legal excuse to perform any promise that forms a whole or part of a contract.

Section 103D-703, HRS and Section 3-126-25 to 3-126-31, HAR

**Business** any corporation, partnership, individual sole proprietorship, joint stock company, joint venture, or any other private legal entity.

**Change order** a written order signed by the procurement officer directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

**Competitive sealed bidding/invitation for bids (IFB)** submission of prices by individuals or firms competing for a contract, privilege, or right to supply merchandise or services. Competitive sealed bidding is the preferred method of source selection. Section 103D-302, HRS and Subchapter 5, Chapter 3-122, HAR

**Competitive sealed proposal or request for proposal (RFP)** is a method of contracting for goods, services or construction whereby proposals are solicited from qualified suppliers, changes in proposals and prices are allowed, and the offer deemed by the awarding authority to be the most advantageous in terms of criteria as designated in the RFP is accepted. Section 103D-303, HRS, and Subchapter 6, Chapter 3-122, HAR

**Construction** the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. The terms includes the routine operations, routine repair, or routine maintenance of existing structures, buildings or real property.

**Contract** all types of agreements, regardless of what they may be called, for the procurement or disposal of goods or services, or for construction.

**Contract Administration** the management of various facets of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and obligations to the purchaser are fulfilled, In public purchasing, this management may include delegating this responsibility to the contract administrator.

**Contract modification** any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

**Cooperative purchasing** procurement conducted by , or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement activity. It is the combining of requirements of two or more political entities to obtain advantages of volume purchases, reductions in administrative expenses or other public benefits, cooperative purchasing is also referred to as piggy backing or hitchhiking Section 103D-802 HRS and Section 3-128-3 HAR

**Cost or pricing data requirement** All facts which might reasonably be expected to contribute to costs incurred or future costs. Section 103D-312 HRS and Subchapter 15, Chapter 3-122, HAR.

**Cost reimbursement contract** a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and state statute.

**Emergency purchases** A purchase made without following normal purchasing procedures in order to obtain goods, services or construction to protect public health and safety and meet the needs resulting from a major natural disaster, epidemic, riot, fire or other emergency proclaimed by the CPO. Section 103D-307, HRS and Subchapter 10, Chapter 3-122, HAR.

**Exempt purchase** free from the procurement requirements of Chapter 103D, HRS, Section 103D-102, HRS and Section 3-120-4, HAR.

**External procurement activity** refers to any buying organization not located in Hawaii which, if located in Hawaii would qualify as a public procurement unit. An agency of the United States is an external procurement activity.

**Goods** are all property, including but not limited to equipment, equipment leases, materials, supplies, printing insurance, and processes, including computers systems and software, excluding land or a permanent interest in land, leases of real property, and office rentals.

**Invitation for bids** refers to all documents, whether attached or incorporated by reference, utilized for soliciting bids.

**Multi-step competitive sealed bidding** a process that requires separate submissions of a technical proposal which may be negotiated as the first step or steps of the process followed by a call for non-negotiable competitive-price bid as the final step. Section 103D-302, HRS and Subchapter 5, Chapter 3-122, HAR

**Preference** an advantage in consideration for award of a contract granted to a bidder by reason of the bidder's residence, business location, origin of product offered, business classification or other reason. Chapters 103, HRS; 103D, HRS; and Chapter 3-124, HAR

**Price lists or price schedules** a group of common items or services which are competitively bid to set prices over a specified period of time.

**Professional Services** infrequent, technical, and /or unique functions performed by independent contractors whose occupation is the rendering of such services. While not limited to licentiates, the services are considered "profession" and the contract may run to partnerships, firms, or corporations as well as individuals. Examples of professional services include medicine, law, accounting, architectural and engineering services, or the professional and scientific occupation series contained in the United States Office of Personnel Management's Qualifications Standards Handbook. Section 103D-304, HRS and Subchapter 7, Chapter 3-122, HAR

**Responsive bidder** a person who has submitted a bid that conforms in all material respects to the solicitation

**Responsible bidder** a person who has the capability in all respects to perform in full the contract requirements, and the integrity and reliability that will assure good-faith performance.

**Small business** a U.S. business that is independently owned and which is not dominant in its field of operation. Sections 103D-901 to 103D-904, HRS, and Chapter 3-127, HAR (pending)

**Small purchase** purchase of a good, service, or construction that is less than \$25,000.

**Sole Source Procurement** an award for a commodity, service or construction to the only known capable supplier. The award is brought about by the unique nature of the requirement, the supplier, or market conditions. Section 103D-306 HRS and Subchapter 9, Chapter 3-122, HAR

**Solicitation in violation of the law** Section 103D-705, HRS and Section 3-126-35 to 3-126-38, HAR

**Specifications** any description of the physical or functional characteristics, or of the nature of a good, service, or construction item. The term includes descriptions of any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery.

**Suspension or debarment of bidders from a bidding process** a shutting out or exclusion, through due process, for cause. Section 103D-702 HRS and Section 3-126-11 to 3-126-18, HAR

**Vendor protest** a complaint about a governmental action or decision brought by a prospective bidder, a bidder, a contractor, or other interested party to the appropriate administrative section with the intention of achieving a remedial result. Chapter 103D-70, HRS and Section 3-126-1 to 3-126-8, HAR

# **APPENDIX D**

## **CROSS REFERENCE INDEX**

**Hawaii Administrative Rules and Hawaii Revised Statutes**

**CROSS REFERENCE INDEX**  
**Hawaii Administrative Rules and Hawaii Revised Statutes**

<b>Title</b>	<b>Brief Description</b>	<b>HAR</b>	<b>HRS</b>
Accounting system, approval	Contractor accounting system must permit timely dev of cost	3-122-155	103D-314
Administrative proceedings	Aggrieved bidder >hearing officers	3-126-42	103D-709
Advertisement in newspaper	Newspaper information request & other options available	3-122-24	103D-302
Allocable cost	Assignable or chargeable to one or more cost obj.	3-123-4	103D-601
Allowable costs	Contract cost that may be reimbursed to the contractor	3-123-2	103D-601
Alternate bids or proposals	Not Acceptable	3-122-4	103D-202
Amendments to IFB	To correct IFB - error, etc reasonable time	3-122-27	103D-302
Amendments to RFP	To correct RFP- error, etc reasonable time	3-122-48	103D-303
Anti competitive practices	Practice among vendors to reduce competition	3-122-191 to 3-122-196	103D-319
Artificially divide purchases	Procurement requirements not to be artificially divided	3-131-2	103D-305
Audit compliance	Periodic review and audit procurement practices	3-121-7	103D-107 & 103D-206
Audit reports	Report made available to the party audited	3-122-176	103D-317
Audit, cost or pricing data	Requirement & right to audit contractor's cost or pricing data	3-122-177	103D-317
Audit, right to	Reasonable time/place audit books/records of contractors	3-122-175	103D-317
Award of contract - IFB	Criteria set forth in IFB	3-122-33	103D-302
Award criteria - IFB	Set forth in IFB	3-122-33	103D-302
<u>Award of contract - RFP</u>	<u>Award to most advantageous</u>	<u>3-122-57</u>	<u>103D-303</u>
Best and final offer - RFP	Conduct final evaluation	3-122-54	103D-303
Bid evaluation and award	Lowest bidder -criteria set forth in IFB	3-122-33	103D-302
Bid opening	Public opening of competitive sealed bids	3-122-30	103D-302
Bid proposal cost	Costs incurred in preparing and submitting bid	3-123-18	103D-601
Bid security	Bonding requirements	3-122-223	103D-323
Bidders list	May be compiled	3-122-25	103D-302
Bidding limits - proposal	Dollar thresholds - sealed proposals	3-122-42	103D-303
Bidding limits -sealed bids	Dollar thresholds - sealed bids	3-122-19	103D-302
Bidding time	10 days minimum between advertised date and opening date	3-122-23	103D-302
Bids, recording & receipt	Time stamp, storage, publicly open-witness-record	3-122-30	103D-302
Bid, rejection of	Nonresponsive, bid or bidder, not conforming	3-122-97	103D-308



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**Hawaii Administrative Rules and Hawaii Revised Statutes**

<b>Title</b>	<b>Brief Description</b>	<b>HAR</b>	<b>HRS</b>
Board-Procurement Policy	Board of five members		103D-201
Board-Procurement Policy	Duties of Board	3-121-1	103D-202
Bonds, bid security	When required	3-122-222 & 3-122-223	103D-323
Bonds, performance - payment	When required	3-122-224	103D-324
Brand name	Brand name, cites specific product	3-122-13(4)	103D-401
Brand name specification	Requires approval of Chief Procurement Officer	3-122-13(3)	103D-401
Breach of contract	Authority to resolve	3-126-25 to 3-126-31	103D-703
Cancellation of IFB or proposals	Solicitation may be canceled or offers rejected	3-122-95	103D-308
Change orders to goods/services	Specific clauses shall be included in all contracts	3-125-2	103D-501
Changes for construction contracts	Specific clauses shall be included in all contracts	3-125-4	103D-501
Chief Procurement Officer	Identification of Chief Procurement Officers	3-121-5	103D-203
Chief Procurement Officer	Delegation of authority	3-121-16	103D-208
Chief Procurement Officer	Authority & duties	3-121-6	103D-205 & 103D-207
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Competitive sealed proposals	Request for proposal (RFP)	3-122-41 to 3-122-59	103D-303
Confidential bid data	May not be inspected -A.G. office determines	3-122-30	103D-302
Consolidate purchase requirements	Purchasing agency responsible	3-131-2	103D-305
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Contract award	IFB's and RFP's	3-122-33 & 3-122-57	103D-302 & 103D-303
Contract controversies	Procedures to resolve contract controversies	3-126-25 to 3-126-31	103D-703
Contractor preference	Preference to instate contractors	3-124-40 to 3-124-45	103-45.5
Contracts, types of	Fixed price, cost reimbursement, cost incentive, etc.	3-122-135 to 3-122-149	103D-313
Cooperative purchasing	Between public procurement units/intergov. relations	3-128-1 to 3-128-8	103D-802
Correction of bids	Mistakes in bids	3-122-31	103D-302
Correction of proposals	Mistakes in proposals	3-122-55	103D-303
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Cost plus fixed fee contract	Fee will be a percentage of total cost of work	3-122-133 & 3-122-137	103D-313
Cost principles	Reimbursement of costs to contractor	3-123-1 to 3-123-24	103D-601
Cost reimbursement contract	Payments to contractor for allowable costs	3-122-135 to 3-122-137	103D-313

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**Hawaii Administrative Rules and Hawaii Revised Statutes**

<b>Title</b>	<b>Brief Description</b>	<b>HAR</b>	<b>HRS</b>
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Definitions	Definitions of terms used in 103D, HRS	3-120-2	103D-104
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Discussions with offerors	Discussions limited to priority listed offerors	3-122-53	103D-303
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<u>Dispute clause</u>	<u>In all state contracts</u>	<u>3-126-31</u>	<u>103D-703</u>
Emergency purchase	Threat to public health, welfare or safety	3-122-88 to 3-122- 91	103D-307
Encumbrance	Contract not binding unless endorsement by Chief Financial Officer (CFO)	3-122-102	103D-309
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Evaluation of bids	Based on criteria in IFB	3-122-33	103D-302
Evaluation of proposals	Committee, numerical rating/ranking, cost	3-122-52	103D-303
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Fix price contract- statement	Authorization for stop work- to include in contract	3-125-6	103D-501
Fixed price contract	Only type of contract for IFB	3-122-13 & 3-122-135	103D-313
Funds exceed bid	Resolicitation of work or negotiation	3-122-33	103D-302
Funds, available	Contract not binding unless certified by CFO	3-122-102	103D-309 & 103D-315
<u>Geographic or regional award</u>	<u>Multi award by region</u>	<u>3-122-146</u>	<u>103D-904</u>

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<b>Title</b>	<b>Brief Description</b>	<b>HAR</b>	<b>HRS</b>
Hawaii products preference	Preference for products produced in Hawaii	3-124-1 to 3-124-8	103D-1002
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Identical bids	Tie bids, rotated low bids, sharing business	3-122-195	103D-319
Incremental award contract	Contract awarded to more than one supplier	3-122-144	103D-322
Indefinite quantity contract	Fixed price for indefinite amount of goods/services	3-122-143	103D-313
Indirect cost	Cost that is identified with no specific final cost objective	3-123-4	103D-601
Inspection of bids	Public inspection at time of opening	3-122-30	103D-302
Inspection of plant, right to	State may inspect, audit cost, investigate	3-122-166 & 3-122-167	103D-316
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Instate preference - contractors	Preference to in-state contractors for public works	3-124-40 to 3-124 -45	103-45.5
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Mistakes in proposals (RFP)	Correction or withdrawal of a proposal	3-122-55	103D-303
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	Specific clauses shall be included in all contracts	3-125-3	103D-501
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Multiple award contract	Award to two or more vendors	3-122-145	103D-322
Multiple bids or proposals	Not acceptable - unless specifically in solicitation	3-122-4	103D-202

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Multi-step sealed proposals	Request an expression of interest, before RFP	3-122-47	103D-303
Multi-term contracts	Services extend over more than one year	3-122-149	103D-315
No bids received	Issue new solicitation or negotiate	3-122-35	103D-302
No proposals received	Issue new solicitation or negotiate	3-122-59	103D-303
Notice of intention to bid	Required for construction	3-122-108	103D-310
Novation	Change of contractor or contractor's name	3-125-14	103D-501
One IFB received	Award to a single bidder	3-122-35	103D-302
One RFP received	Award to a single offeror	3-122-59	103D-303
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Payment for goods & services	No later than 30 days		103-10
Penalties	Violations of Chapter 103D or rules	3-131-4	103D-106
Penalty - printing	Unauthorized printing out of state	3-124-13	103D-1003
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Performance incentive contract	Contractor's performance determines fees	3-122-139	103D-313
Performance specification	Describes capabilities product must meet	3-122-13	103D-405
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Preference, in-state contractors	Promote use of instate contractors	3-124-40 to 3-124-45	103-45.5
Preference, printing	To promote printing performed in Hawaii	3-124-10 to 3-124-13	103D-1003
Preference, qualified community rehabilitation programs	To promote nonprofit community rehabilitation programs	3-124-60 to 3-124-67	103D-22.1
Preference, reciprocal	Applied to bidders from other state w/ preferences	3-124-15 to 3-124-18	103D-1004
Preference, recycled	To promote the use of recycled products	3-124-20 to 3-124-26	103D-1005
Preference, software development	To promote software developed in Hawaii	3-124-30 to 3-124-35	103D-1006
Preference, tax	Adjust bid price for tax exempt vendors	3-124-50 to 3-124-55	103-53.5
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